

MT LEGISLATIVE HISTORY

Chapter 196 1987

Bill H 301 S _____

Original bill & hist. ☒ C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) _____ C

Hearing Date(s) _____ C

_____ C

_____ C

2/5 ☒ C

3/6 ☒ C

_____ C

_____ C

Date Out

2/10 ☒ C

3/6 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☒ No

Committee _____

Report _____

HOUSE BILL NO. 301

INTRODUCED BY RAPP-SVRCEK, GOULD, PINSONEAULT,
HALLIGAN, HANNAH, VAN VALKENBURG, SANDS

IN THE HOUSE

JANUARY 20, 1987

INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

FEBRUARY 10, 1987

COMMITTEE RECOMMEND BILL
DO PASS. REPORT ADOPTED.

FEBRUARY 11, 1987

PRINTING REPORT.

FEBRUARY 12, 1987

SECOND READING, DO PASS.

FEBRUARY 13, 1987

ENGROSSING REPORT.

THIRD READING, PASSED.
AYES, 84; NOES, 6.

TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 16, 1987

INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

MARCH 7, 1987

COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

MARCH 12, 1987

SECOND READING, CONCURRED IN.

MARCH 14, 1987

THIRD READING, CONCURRED IN.
AYES, 50; NOES, 0.

RETURNED TO HOUSE.

IN THE HOUSE

MARCH 14, 1987

RECEIVED FROM SENATE.

SENT TO ENROLLING.

1 House BILL NO. 301
 2 INTRODUCED BY Henry Smith John Harold Kelly
 3 Henry VanValkenburg Senate
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO CHANGE THE
 5 DEFINITION OF THE OFFENSE OF NEGLIGENT VEHICULAR ASSAULT AND
 6 TO CREATE THE OFFENSES OF NEGLIGENT ENDANGERMENT AND
 7 CRIMINAL ENDANGERMENT; AND AMENDING SECTION 45-5-205, MCA."

8
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 45-5-205, MCA, is amended to read:

11 "45-5-205. Negligent vehicular assault -- penalty. (1)
 12 If a person operates a motor vehicle in a negligent manner
 13 and he is driving while under the influence of alcohol or
 14 drugs, as provided for in 61-8-401(1), and his conduct is
 15 the proximate cause of serious bodily injury to another, he
 16 commits the offense of negligent vehicular assault.

17 (2) A person convicted of the offense of negligent
 18 vehicular assault shall be fined an amount not to exceed
 19 \$1,000 or imprisoned in the county jail for a term not to
 20 exceed 1 year, or both."

21 NEW SECTION. Section 2. Criminal endangerment --
 22 penalty. (1) A person who knowingly engages in conduct that
 23 creates a substantial risk of death or serious bodily injury
 24 to another commits the offense of criminal endangerment.

25 (2) A person convicted of the offense of criminal

1 endangerment shall be fined an amount not to exceed \$50,000
 2 or imprisoned in the state prison for a term not to exceed
 3 10 years, or both.

4 NEW SECTION. Section 3. Negligent endangerment --
 5 penalty. (1) A person who negligently engages in conduct
 6 that creates a substantial risk of death or serious bodily
 7 injury to another commits the offense of negligent
 8 endangerment.

9 (2) A person convicted of the offense of negligent
 10 endangerment shall be fined an amount not to exceed \$1,000
 11 or imprisoned in the county jail for a term not to exceed 1
 12 year, or both.

13 NEW SECTION. Section 4. Codification instruction.
 14 Sections 2 and 3 are intended to be codified as an integral
 15 part of Title 45 and the provisions of Title 45 apply to
 16 sections 2 and 3.

-End-

DESCRIPTION OF PROPOSED LEGISLATION:

An act to change the definition of the offense of negligent vehicular assault and to create the offenses of negligent endangerment and criminal endangerment; and amending section 45-5-205, MCA.

ASSUMPTIONS:

1. One third of those convicted are sentenced to some prison term entailing at least one year and that two-thirds are placed under field supervision.
2. An estimated 30 additional inmates for FY88 and 36 for FY89 at the Montana State Prison is assumed.
3. The field supervision caseload will increase by an estimated 62 cases in FY88 and 73 cases in FY89.
4. An average caseload per field officer of 90. The additional workload will require a .70 FTE Community Corrections Specialist in FY88 and .80 FTE in FY89.
5. Only variable operational costs and indirect costs are adjusted for the estimated additional inmates at Montana State Prison.
6. Inflation adjustment for operational increases reflect rates recommended in the Executive and LFA budget proposal.

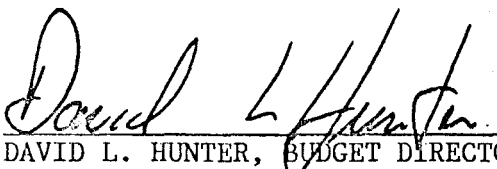
FISCAL IMPACT:

Expenditures:

	<u>FY88</u>	<u>FY89</u>
Personal Services	\$ 15,035	\$ 18,176
Operations	<u>79,259</u>	<u>103,520</u>
Total	\$ 94,294	\$121,696

Funding:

General Fund	\$ 94,294	\$121,696
--------------	-----------	-----------

 DATE 1/27/89
DAVID L. HUNTER, BUDGET DIRECTOR

Office of Budget and Program Planning

DATE _____
PAUL RAPP-SVRCEK, PRIMARY, SPONSOR

Fiscal Note for HB301, as introduced.

HB 301

DESCRIPTION OF PROPOSED LEGISLATION:

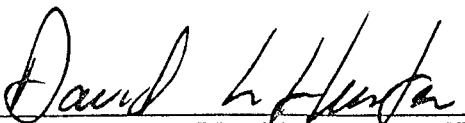
A bill for an act entitled: "An act to change the definition of the offense of negligent vehicular assault and to create the offenses of negligent endangerment and criminal endangerment; and amending Section 45-5-205, MCA."

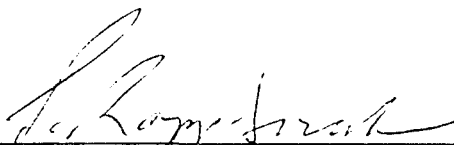
ASSUMPTIONS:

1. Assume that section 1 and 3 of this proposed legislation deals with misdemeanors and that there is no state fiscal impact.
2. Section 2 of the proposed legislation entails a wide variety of offenses with an undeterminable fiscal impact.

FISCAL IMPACT:

Unknown.

 DATE 2/13/87
DAVID L. HUNTER, BUDGET DIRECTOR
Office of Budget and Program Planning

 DATE 2/14
PAUL RAPP-SORCEK, PRIMARY SPONSOR

Fiscal Note for HB301, as introduced.

REVISED FISCAL NOTE

HB 301
#2

STATUS SHEET

50th LEGISLATIVE SESSION

JUDICIARY

COMMITTEE

HOUSE BILL NUMBER	ENTERED COM. DATE	DATE CON- SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON- CURRED IN DATE	BE NOT CON- CURRED IN DATE	BE CON- CURRED IN AMENDED DATE	BE NOT CONCURRED IN AS AMENDED DATE
240	1/27/87	1/27/87	2/19/87			2/19/87					
241	1/16/87	1/28/87	2/12/87			2/12/87					
256		2/12/87	2/14/87			2/14/87					
262	1/17/87	2/5/87	2/12/87	2/12/87							
267	1/17/87	1/29/87	1/29/87	1/29/87							
268	1/17/87	2/3/87	2/3/87	tabled							
283	1/19/87	1/30/87				2/5/87					
284	1/19/87	1/30/87	2/19/87			2/19/87					
286	1/19/87	2/6/87				2/23/87					
291	1/19/87	1/27/87	Referred to Highways Committee.								
✓ 301		2/5/87	2/10/87	failed to meet deadline							
305	1/20/87	2/5/87	2/6/87	2/6/87							
309	1/20/87	1/29/87	2/3/87			2/3/87					
316	1/20/87	1/28/87				2/19/87					

Use a separate sheet for Senate Bills, House Bills, and Resolutions.

8

JUDICIARY COMMITTEE
50TH LEGISLATIVE SESSION
1987

<u>Committee Members</u>	<u>District</u>
Rep. Earl Lory, Chairman	59
Rep. John Mercer, Vice Chairman	50
Rep. Kelly Addy	94
Rep. Dave Brown	72
Rep. Tom Bulger	37
Rep. John Cobb	42
Rep. Fritz Daily	69
Rep. Paula Darko.	2
Rep. Ralph Eudaily	60
Rep. Leo Giacometto	24
Rep. Bud Gould	61
Rep. Ed Grady	47
Rep. Tom Hannah	86
Rep. Vernon Keller	83
Rep. Al Meyers	53
Rep. Joan Miles	45
Rep. Paul Rapp-Svrcek	51
Rep. Bill Strizich	41

Secretary

Renee Podell

Staff

John McMaster

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

February 5, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on February 5, 1987, at 8:00 a.m. in Room 312 D of the State Capitol.

ROLL CALL: All members were present.

HOUSE BILL NO. 262: Rep. Bradley, District 79, sponsor, stated that this bill sets up a hearsay exception for use in court in cases of sexual molesting of children. The child must be under the age of 10 and if it were to be admissible, the judge would make a written finding based on the evidence. This bill tries to protect the child. When this situation arises, the court is dealing with a very young child who is incompetent to be a witness, that is, the child would have forgotten the events, would be too young to understand a logical train of events throughout the time and would not understand the meaning of giving the truth or some such situation. The child is just not a proper witness. This lets a case go forward when otherwise it might not. Exceptions already in existence will not work in this particular situation. She submitted several articles for the record. (Exhibit A-H).

PROPOSERS: MIKE MCGRATH, Lewis and Clark County Attorney, explained that the problem is that the standard rules of evidence court procedures are not designed for children witnesses and are not designed for children that are victims of crime. Under the present law, unless there is specific exception, hearsay evidence is not admissible. The incidence of sexual abuse of young children has increased dramatically in recent years. Statistics show that there has been a 200% increase in the reporting of sexual abuse since 1976. By 1980, there were 25,000 reported cases annually. A substantial number of cases are never reported; estimates of the actual incidence vary from 100,000 to 500,000 per year. Often the child victim's out-of-court statements constitute the only proof of the crime of sexual abuse. Despite the importance of cross-examination, exceptions to the hearsay rule have long existed in evidentiary law. He urged adoption for this law and submitted an excerpt from the Kansas Supreme Court opinion. (Exhibit I).

SANDY ASHLY, works for the Mental Health Center in the sexual assault treatment program, pointed out that children are not little adults. Sexual abuse is an extremely

This forms the dividing line between a misdemeanor and a felony. He submitted a written letter from Mr. James C. Bartlett, Attorney from Kalispell, which stated that the justification for the bill, in his opinion, is the economic reality that every 12 years the price of goods doubles. The criminal code was passed in 1973. Fourteen years have passed and therefore, \$800.00 is equivalent to the \$300.00 figure in terms of price of goods. Therefore, it is appropriate to raise the value. (Exhibit A).

There were no proponents, opponents and no questions from the committee.

Rep. Cohen closed the hearing.

HOUSE BILL NO. 301: Rep. Rapp-Svrcek, District No. 51, sponsor, stated that this bill plugs a hole in the criminal law by creating the offenses of criminal and negligent endangerment. These offenses would apply primarily to cases in which someone would introduce poison into aspirin tablets or something of that nature. He pointed out that a person who knowingly engages in conduct that creates a substantial risk of death or serious bodily injury to another commits the offense of criminal endangerment. He stated that the fiscal note attached is in error.

PROPOSERS: MARK J. MURPHY, Attorney General's Office, representing the Montana County Attorney's Association, stated that this bill addresses gross negligence. He urged support for the legislation.

MIKE MCGRATH, Lewis and Clark County Attorney, strongly supported the bill.

There were no further proponents, no opponents and no questions from the committee. Rep. Rapp-Svrcek closed the hearing on House Bill No. 301.

HOUSE BILL NO. 419: Rep. Spaeth, sponsor, requested that Rep. Mercer speak for him in asking the committee to let the bill sit in committee. There was no action taken on this bill as of this date.

EXECUTIVE SESSION:

ACTION OF HOUSE BILL NO. 283: Rep. Darko moved, DO PASS. Rep. Bulger moved to amend by deleting lines 14 and 15 on page 3.

Rep. Addy stated that this section is setting the grounds for modifying the custody decree and it sounds like good grounds for modifying the decree. Rep. Bulger did not agree

DAILY ROLL CALL
JUDICIARY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Feb. 5, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)	✓		
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

February 10, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on February 10, 1987, at 8:00 a.m. in Room 312 D of the State Capitol.

ROLL CALL: All members were present.

HOUSE BILL NO. 554: Rep. Daily, District No. 69, requires creation of an escrow fund to pay crime victims from the perpetrator's proceeds of a crime. This bill tries to prevent people who have committed a serious crime in Montana, and have been convicted of a serious crime, from benefiting financially from the crime. Any profit received from the crime will be paid to the victims or the victims family. It will also pay for court appointed attorneys and the remainder will be deposited into the crime victims fund. Current statute allows the Workers' Compensation to do this and the statute uses the word "may" and this bill changes the language to "shall" which requires them to do this so that perpetrators will not benefit from their crime.

PROPOSERS: MIKE MCGRATH, Lewis and Clark County Attorney, supported this legislation. He stated that this bill was drafted by the County Attorney's Association. This bill insures victims will receive the fund.

HIRAM SHAW, Workers' Compensation, Department of Labor and Industry, stated that HB 554 allows a minimum of \$5000.00 to automatically go to the victim and the remainder of the funds will be placed in the crime victims account.

There were no further proponents and no opponents. There were no questions from the committee.

Rep. Daily closed the hearing on HB 554.

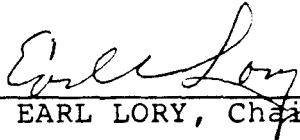
HOUSE BILL NO. 371: Rep. Addy, District No. 94, sponsor, stated this bill allows the Department of Motor Vehicles to turn over to the selective service system the names of individuals who reach the age of which they are suppose to register for the selective service. That age is 18. He addressed two aspects of the bill: 1. Fairness; 2. Privacy. He stated that it has been determined that by registering everyone before a national emergency occurs, at least four months in start up time is saved. People who fail to comply with the law actually get a better shake than those

ACTION ON HB 301: Rep. Bulger moved DO PASS. Question was called and a voice vote was taken. The motion CARRIED 11-2, with Reps. Brown and Daily dissenting. HB 301, DO PASS.

ACTION ON HOUSE JOINT RESOLUTION NO. 13: Rep. Darko moved DO PASS. Rep. Lory moved to amend on page 2, line 9, inserting: "(2) that if passed, the Secretary of State shall send a copy of this joint resolution to each Supreme Court Justice and District Court Judge." (See Amendments attached). Question was called and a voice vote was taken. The motion CARRIED unanimously. Rep. Darko moved that HJR 13, DO PASS AS AMENDED. Question was called and a voice vote was taken. The motion CARRIED unanimously. HJR 13, DO PASS AS AMENDED.

ACTION ON HB 472: Rep. Darko moved DO PASS. Rep. Mercer stated that he feels it is a good idea to use mediators in divorce cases. Rep. Meyers wondered if the mental health agencies could somehow start mediation programs. Rep. Darko stated that this would cause an overload of work in the agencies. Rep. Bulger pointed out that there were problems in the bill that needed to be worked out. Rep. Daily stated that financially the budget could not handle setting up this system in the courts. Rep. Meyers moved to TABLE the bill. He stated it was not his intent to kill the bill but problems existed in it and they needed to be worked out. A voice vote was taken and the motion CARRIED 12-1. HB 472 TABLED.

ADJOURNMENT: There being no further business to come before the committee, the hearing was adjourned at 10:55 a.m.



EARL LORY, Chairman

DAILY ROLL CALL
JUDICIARY

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Feb 10, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)	✓		
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

STANDING COMMITTEE REPORT

February 10,

19 87

Mr. Speaker: We, the committee on Judiciary

report HOUSE BILL NO. 301

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

Chairman

FIRST _____ reading copy (WHITE)
color

MONTANA STATE SENATE

JUDICIARY COMMITTEE

50TH LEGISLATURE

COMMITTEE MEMBERS: Senator Joe Mazurek, Chairman
 Senator Bruce Crippen, V. Chairman
 Senator Tom Beck
 Senator Al Bishop
 Senator Chet Blaylock
 Senator Bob Brown
 Senator Jack Galt
 Senator Mike Halligan
 Senator Dick Pinsoneault
 Senator Bill Yellowtail

STAFF ATTORNEY: Valencia Lane

COMMITTEE SECRETARY: Mary Huber

BOOK: 1 of 4

INCLUSIVE DATES: January 6 - January 30, 1987

CHAIRMAN--SEN. JOE MAZUREK
NORMAL SCHEDULE==> SITE: ROOM 325

DAYS: MON THRU FRI TIME: 10:00 A.M.

SECRETARY--MARY HUBER

--BILL NO--	REFER DATE--	HEARING DATE--	CONSIDERATION DATES--	COMMITTEE ACTION--	REFERRED TO COMM--	DATE OUT--
HB0277	2/23	3/17		CONCUR AS AMENDED		3/17
CONNELLY, MARY ELLEN			IMPOSING A DRIVER'S LICENSE REINSTATEMENT FEE TO FUND COUNTY DUI PROGRAMS			
HB0283	2/12	3/16		CONCUR AS AMENDED		3/21
DARKO, PAULA			VISITATION CHANGE CUSTODIAN MOVES; OBSTRUCT VISITATION BASIS CUSTODY CHANGE			
HB0284	3/02	3/16		CONCUR AS AMENDED		3/21
DARKO, PAULA			VISITATION INTERFERENCE AS A CRIME			
HB0286	3/02	3/24		CONCUR AS AMENDED		3/27
SPAETH, GARY			PERSONAL INJURY AND PROPERTY DAMAGE LIABILITY OF IRRIGATION DISTRICTS			
✓ HB0301	2/16	3/06		CONCUR		3/6
RAPP-SVRCEK, PAUL			NEGLIGENT ENDANGERMENT AND NEGLIGENT VEHICULAR ASSAULT CRIMINAL LAWS			
HB0309	2/23	3/23		CONCUR AS AMENDED		3/26
QUILICI, JOE			GENERALLY REVISING THE CRIME VICTIMS COMPENSATION ACT			
HB0326	2/10	3/05		CONCUR AS AMENDED		3/5
ADDY, KELLY			CREDIT FOR TIME SERVED ON SENTENCE WHEN PROBATION IS REVOKED			
HB0335	2/17	3/03		CONCUR AS AMENDED	Referred back 3/3	3/3 3/4
PISTORIA, PAUL			ALLOW PRIVATE PARKING SERVICE TO ENTER AGREEMENT WITH LOCAL GOVERNMENT			
HB0344	3/02	3/18		CONCUR AS AMENDED		3/19
ASAY, TOM			REVISE TIME LIMITS FOR MEDICAL MALPRACTICE ACTIONS			
HB0353	2/10	3/23		CONCUR		3/23
GOULD, BUDD			INCLUDING DENTISTS IN DOCTOR-PATIENT PRIVILEGE			
14 HB0367	2/16	3/23		CONCUR		3/23
MILLER, RON			FURNISHING HUMAN TISSUE A SERVICE AND NOT A SALE			

1 House BILL NO. 301
2 INTRODUCED BY Rep. Smith Sen. Hefner
3 Sen. Van Vleet Sen. Hefner
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO CHANGE THE
5 DEFINITION OF THE OFFENSE OF NEGLIGENT VEHICULAR ASSAULT AND
6 TO CREATE THE OFFENSES OF NEGLIGENT ENDANGERMENT AND
7 CRIMINAL ENDANGERMENT; AND AMENDING SECTION 45-5-205, MCA."
8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
10 Section 1. Section 45-5-205, MCA, is amended to read:
11 "45-5-205. Negligent vehicular assault -- penalty. (1)
12 If a person operates a motor vehicle in a negligent manner
13 and he is driving while under the influence of alcohol or
14 drugs, as provided for in 61-8-401(1), and his conduct is
15 the proximate cause of serious bodily injury to another, he
16 commits the offense of negligent vehicular assault.
17 (2) A person convicted of the offense of negligent
18 vehicular assault shall be fined an amount not to exceed
19 \$1,000 or imprisoned in the county jail for a term not to
20 exceed 1 year, or both."
21 NEW SECTION. Section 2. Criminal endangerment --
22 penalty. (1) A person who knowingly engages in conduct that
23 creates a substantial risk of death or serious bodily injury
24 to another commits the offense of criminal endangerment.
25 (2) A person convicted of the offense of criminal

1 endangerment shall be fined an amount not to exceed \$50,000
2 or imprisoned in the state prison for a term not to exceed
3 10 years, or both.
4 NEW SECTION. Section 3. Negligent endangerment --
5 penalty. (1) A person who negligently engages in conduct
6 that creates a substantial risk of death or serious bodily
7 injury to another commits the offense of negligent
8 endangerment.
9 (2) A person convicted of the offense of negligent
10 endangerment shall be fined an amount not to exceed \$1,000
11 or imprisoned in the county jail for a term not to exceed 1
12 year, or both.
13 NEW SECTION. Section 4. Codification instruction.
14 Sections 2 and 3 are intended to be codified as an integral
15 part of Title 45 and the provisions of Title 45 apply to
16 sections 2 and 3.

-End-

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 6, 1987

The thirty-seventh meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. on March 6, 1987 by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All members were present.

CONSIDERATION OF HB 197: Representative Ed Grady of Cannon Creek introduced HB 197 (see Exhibit 1).

PROPOSERS: Gordon Morris, representing himself, explained a story about a car in Missoula, Montana that was hit and it was parked by a sorority and it was totaled by some college kids that came around the corner and hit it. He said he had to fight with his insurance company because the people that hit his car were uninsured people. He said the people ended up paying the minimum fine and he lost his insurance policy over the deal.

Bill Lannon, representing himself, explained how a year ago he was struck by a car with uninsured motorist in it. He said the man paid a minimum fine and he has so far paid around \$13,000 in medical expenses, and still has quite bit more time in the hospital to come because of operations. He felt uninsured motorist should not be able to drive.

Alice Armstrong, representing herself, said she was a victim of a drunk driver accident. She felt if one can afford to drive a car, they can pay for insurance.

Karl Englund, Montana Trial Lawyers Association, supported the bill because it is a real mess to collect from an uninsured motorist.

OPPOSERS: Mike Koehuke, representing himself, handed out some amendments (see Exhibit 2). He explained he lives on a ranch in Townsend and he has a neighbor that was hit by another motorist. He said the neighbor had never had a ticket in his life, but when he went to put a claim on his insurance for this accident, the insurance company informed him that one of his premium payment checks bounced. He explained that there was one day because of this that the neighbor was uninsured. He pointed out the officer gave the neighbor a ticket for not carrying insurance. The judge did not press any fine against the neighbor because the judge felt the gentlemen just didn't know that the check had bounced and so, therefore the judge let him go, on the grounds that he didn't willfully not want to get insurance. He said he also has an 18 year old boy working on his

place and the boy was caught night speeding near Bozeman. He explained that the boy had no insurance. He said the boy got another nighttime speeding ticket and this time spent two days in jail and around \$610 worth of fines for not having insurance. He said the amendment will still present a fine but not as stiff as one that is purposed in the bill, because many times the uninsured people are young people because it is too expensive or it is an older person who can't afford it either.

DISCUSSION ON HB 197: Senator Beck asked Representative Grady if the bill address the court order reimbursements that some have brought up. Representative Grady said the bill doesn't address that.

Senator Pinsoneault asked Mike McGrath, Lewis and Clark County Attorney, if the judge could give a person 30 days to pay his fine and if he doesn't pay the fine for not having insurance, could the judge then order the 10 days in jail according to this amendment presented. Mr. McGrath said that could be done.

Representative Grady closed by giving a letter to the committee from a Captain Wood (Exhibit 1A).

CONSIDERATION OF HB 301: Representative Rapp Svrcek of Thompson Falls introduced HB 301 (see Exhibit 3).

PROPOSERS: Mike McGrath, Lewis and Clark County Attorney, said the bill is patterned to many other laws in other states. He said under the present law if a person lives after an assault there is no charge that we can charge the assailant with, such as nurses who are drug addicts will change a patients medicine so the nurse can have it and if the person who took the wrong medicine lives, the state of Montana has nothing they can charge that nurse with.

Mark Murphy, Assistant Attorney General, presented several different states statutes to the committee on this issue (see Exhibit 4). He also presented two cases dealing with this issue (see Exhibit 5).

OPPOSERS: None

DISCUSSION ON HB 301: Senator Crippen asked if there was not a way at all to charge in this state someone for tampering with medicine in a grocery store. Mr. McGrath said we could charge them with misdemeanor criminal mischief. Senator Mazurek asked why it was necessary to reduce the cause standard and the serious bodily injury. Mr. McGrath replied that the "approximate" is dropped because it is not a criminal standard. He said serious bodily injury was dropped because that is a high standard too. Senator Mazurek felt the bill will make every car accident that had negligence involved in it a criminal matter. Mr. McGrath said the statute says right now one has to be under the influence before one can

Judiciary Committee
Minutes of the meeting
March 6, 1987
page 3

charge him for any criminal offense.

Senator Crippen asked if a doctor injured someone because it was the first time he had done the procedure or he had always done a certain procedure in a certain way that was not on the books, could he get caught by this bill. Mr. McGrath responded that it could apply in certain cases. He said the statute is vague, but we don't have any statute right now and it is needed.

Senator Pinsoneault said Senator Crippen would be excellent in writing law examinations.

Representative Rapp Svrcek closed.

CONSIDERATION OF HB 413: Representative Ray Brandewie of Bigfork presented HB 413 (see Exhibit 6). He explained that one kilogram of marijuana is about two grocery bags full of the stuff.

PROPOSERS: Gary Carrell, Montana Department of Justice, said people may not have the exact amount, but he felt the amount is not the most important part of this issue.

Mark Murphy, Assistant Attorney General, supported the bill because there are other factors that should be looked more closely than the fact of how much the person might have on him at the time of the arrest.

DISCUSSION ON HB 413: Senator Brown asked where the kilogram amount came from that is in the law right now. Mr. Murphy said if one can establish the proof of selling in small quantities, you have a better chance of catching the person.

Senator Yellowtail questioned if the present language state that if you have drugs on you, you are a potential seller of the drug. Mr. Murphy said the law doesn't say that.

Senator Crippen asked if the bill still has to show intent to sell. Mr. Murphy responded that the bill only works if the department can prove intent to sell.

Senator Blaylock asked what would happen if a policeman just caught a kid with some marijuana on him. Mr. Murphy said that marijuana is broken down into possession, possession with intent to sell, and sell. He said a difference between a misdemeanor and felony is the the kid would have to have 60 grams on him at the time of the arrest. Senator Blaylock inquired if the county attorneys have had a hard time convicting people because of the amount statute. Mr. Murphy stated that in his personal experience he has had minimum difficulty.

Representative Brandewie closed.

using one acre for planting marijuana in the middle of the thousand acres, would the whole thousand acres be forfeited. Mr. Murphy answered that the 999 acres could be interpreted as a covert system to hide what they have in the middle and that would make the whole thousand acres possible forfeiture item. Senator Yellowtail felt the the real property language in the bill was confusing.

Senator Mazurek asked again if a farmer in Yellowstone Valley has a crop of marijuana in his garden, could he lose his house and land. Mr. Murphy said as a general rule no. Senator Mazurek asked why he would say that; what language in this bill would limit that from happening. Mr. Murphy said he didn't know what language would limit that action. Mr. Murphy echoed that if both bills pass, this language on real property will be eliminated.

Representative Brandewie closed by saying this bill is for more than the drug of marijuana, but for all drugs.

Senator Beck asked if drugs were grown on federal land would it be subject to foreclosure or whatever. Mr. Murphy said the federal government has a program that looks to see if anyone is using their property for drug growing. He said it is found quite a bit on federal lands. He said the cause of connection has to be between the property and the operation.

The committee adjourned to do executive session.

ACTION ON HB 197: Senator Yellowtail felt the bill will not make those who can't afford insurance afford it. Senator Beck asked if the judge can order court reimbursement to the party that was injured; maybe just for auto repairs. Senator Halligan stated that restitution is part of the sentencing process usually. Senator Halligan said the bill will not harm anything, but it will not help either. Senator Pinsoneault said if a person make restitution quickly, then the judge usually does go easy on a person. Senator Galt moved the bill BE CONCURRED IN. The motion CARRIED with Senators Yellowtail and Halligan voting no.

ACTION ON HB 301: Valencia commented on the bill (see Exhibit 3). Senator Halligan stated that the bill could never handle the doctor issue that the Senator Crippen asked about. He said that is just way to complicated for this statute to handle it. Senator Pinsoneault said it is very difficult to show that a person purposefully caused injury to another in the kind of incidents that the committee has talked about. The committee decided to wait on the bill because of Valencia's comments on the bill. Senator Yellowtail asked if a person drinks a case of beer and gets into a car, is that person guilty of criminal endangerment or is it negligence endangerment. Senator Halligan said an prosecuting

Judiciary Committee
Minutes of the meeting
March 6, 1987
page 6

attorney would charge him with the highest possible charge that they can, which is criminal endangerment. Senator Yellowtail said if it is criminal endangerment, then it is a felony. Senator Yellowtail said can the criminal endangerment be any higher than what this bill is trying to get. The committee decided to move on.

ACTION ON HB 413: Senator Beck moved the bill BE CONCURRED IN. Senator Halligan asked what year the one kilogram was put into the statute. Senator Blaylock said around 1975. The motion CARRIED.

ACTION ON HB 435: Valencia wanted to clarify that if the committee passes this bill with the coordination amendment, only the language in (h) will be struck from this bill. Senator Galt moved the Brandewie amendment to coordinate the HB 435 and SB 241. Senator Halligan thought the two should just merge into one bill instead of two. Senator Halligan thought we should table this bill and let the SB 241 go through the whole procedure and see if it will pass. Valencia said there are two other changes; on page 3, line 19 through 21 and page 5, lines 5 through 9. She said these changes are from the Brandewie amendment that was passed. Senator Pinsoneault moved the bill BE CONCURRED IN AS AMENDED. Senator Yellowtail felt Representative Brandewie should try to kill SB 241 to get this one passed instead of combining the two of them. Senator Pinsoneault made a substitute motion to to insert the language that the Judiciary Committee inserted in SB 241 and put it in place of (h). The committee decided to wait a few minutes on action.

ACTION ON HB 301 AGAIN: Senator Pinsoneault didn't want a laundry list in the bill of the kinds of "negligent vehicular assault". Senator Halligan informed the committee that he could only get a man with a misdemeanor once for leaving a two year old child in a car when it was 10 below zero outside for over two hours and the car was shut off. He said that is all he could get the guy on because there is no statute that defines what to do in cases like this. Senator Mazurek wanted to insert "unreasonably creates a substantial risk of death or bodily injury". Senator Halligan moved that motion. Senator Pinsoneault said that won't help anything. Senator Pinsoneault said the committee is mixing civil and criminal statutes in this bill with that amendment. Senator Halligan withdrew his motion and moved to insert "serious" before bodily injury in the bill. Senator Pinsoneault said that is great fun trying to define "serious". Senator Pinsoneault said people have the the vested right to drive the way they want to because that is somehow in our heritage. Senator Mazurek did not agree. Senator Blaylock moved the bill BE CONCURRED IN. The motion CARRIED with Senator Mazurek voting no.

The committee adjourned at 12:00 p.m.


Chairman

ROLL CALL

Judiciary

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date *Mar*

NAME	PRESENT	ABSENT	EXCUSED
<u>Senator Joe Mazurek, Chairman</u>	X		
<u>Senator Bruce Crippen, Vice Chairman</u>	X		
<u>Senator Tom Beck</u>	X		
<u>Senator Al Bishop</u>	X		
<u>Senator Chet Blaylock</u>	X		
<u>Senator Bob Brown</u>	X		
<u>Senator Jack Galt</u>	X		
<u>Senator Mike Halligan</u>	X		
<u>Senator Dick Pinsoneault</u>	X		
<u>Senator Bill Yellowtail</u>	X		

Each day attach to minutes.

23

STANDING COMMITTEE REPORT

March 6

67

19

MR. PRESIDENT

We, your committee on SENATE JUDICIARY

having had under consideration..... HOUSE BILL No. 301

Third reading copy (blue)
color

Negligent endangerment and negligent vehicular assault criminal laws.
Rapp-Svrcek (Van Valkenburg)

Respectfully report as follows: That..... HOUSE BILL No. 301

BEST COPY
AVAILABLE

~~DO PASS~~

BE CONCURRED IN

~~DO NOT PASS~~

.....
Senator Mazurek

Chairman.

24

SUMMARY OF HB301 (RAPP-SVRCEK)
(Prepared by Senate Judiciary Committee staff)

HB301 changes the criminal statutes by changing the definition of the offense of negligent vehicular assault and creating two new crimes: criminal endangerment and negligent endangerment.

Section 1. Amends 45-5-205. Changes the definition of "negligent vehicular assault". Under current law, a person must 1) be operating a motor vehicle in a negligent manner, and 2) be driving under the influence of drugs or alcohol, and 3) the conduct must be the proximate cause of serious bodily injury to another to meet the definition of negligent vehicular assault. Under this bill, the first two requirements remain the same but the third requirement is changed so that the conduct must just be the cause of bodily injury to another. "Cause" is a lesser standard than "proximate cause" and "bodily injury" is a lesser standard than "serious bodily injury". Therefore, these changes would make negligent vehicular assault easier to prove.

Section 2. New. Creates the crime of criminal endangerment. A person who knowingly engages in conduct that creates a substantial risk of death or serious bodily injury to another commits the offense of criminal endangerment. Penalty: a fine not exceed \$50,000 or imprisonment in the state prison not to exceed 10 years, or both.

Section 3. New. Creates the crime of negligent endangerment. A person who negligently engages in conduct that creates a substantial risk of death or serious bodily injury to another commits the offense of negligent endangerment. Penalty: a fine not to exceed \$1,000 or imprisonment in the county jail not to exceed 1 year, or both.

COMMENTS: Q- Does conduct such as a doctor operating on a patient constitute "criminal endangerment"? There are no qualifications, such as "unreasonably" creates a substantial risk. The penalty of \$50,000 or 10 years seems rather high, especially compared to the penalty for negligent vehicular assault which involves driving under the influence and is only \$1,000 or county jail for 1 year, or both. Q- Could conduct fall under both negligent vehicular assault and negligent endangerment? Which would apply?

CHAPTER 12

ASSAULT AND RELATED OFFENSES

Sec.

- 13-1201. Endangerment; classification.
- 13-1202. Threatening or intimidating; classification.
- 13-1203. Assault; classification.
- 13-1204. Aggravated assault; classification.
- 13-1205. Unlawfully administering intoxicating liquors, narcotic drug or dangerous drug; classification.
- 13-1206. Dangerous or deadly assault by prisoner.

Chapter 12, consisting of §§ 13-1201 to 13-1206, was added by Laws 1977, Ch. 142, § 61, effective October 1, 1978 and Laws 1978, Ch. 215, § 1, effective October 1, 1978.

For disposition of the subject matter of sections of the former Criminal Code and derivation of sections of the revised Criminal Code, see Tables at the front of this volume.

Cross References

Classification of offenses, see § 13-601 et seq.
Fines, see § 13-801 et seq.
Indictment or information, nature and contents, see Rules Cr.Proc. Rule 13.2.
Sentencing, imprisonment, see § 13-701 et seq.

Law Review Commentaries

Assault and related offenses. Ariz. Criminal Code revision. 13 Ariz.Bar State L.J. 3, 1977, p. 510. J. No. 2, p. 14 (1977).

§ 13-1201. Endangerment: classification

A. A person commits endangerment by recklessly endangering another person with a substantial risk of imminent death or physical injury.

B. Endangerment involving a substantial risk of imminent death is a class 6 felony. In all other cases, it is a class 1 misdemeanor.
Added Laws 1977, Ch. 142, § 61, eff. Oct. 1, 1978.

Historical Note

• Former § 13-1201 was transferred and renumbered as § 13-3801.

Cross References

Homicide from reckless or negligent conduct, see §§ 13-1102 to 13-1104.

BEST COPY
AVAILABLE

Stated in Maynard v. State, Ct. App.
Op. No. 136 (File No. 5501), 652 P.2d 489
(1982).

EXHIBIT NO. 4

DATE March 6, 1983

BILL NO. HB 301

Sec. 11.41.230. Assault in the fourth degree. (a) A person commits the crime of assault in the fourth degree if

- (1) that person recklessly causes physical injury to another person;
- (2) with criminal negligence that person causes physical injury to another person by means of a dangerous instrument; or
- (3) by words or other conduct that person recklessly places another person in fear of imminent physical injury.

(b) Assault in the fourth degree is a class A misdemeanor. (§ 3 ch 166 SLA 1978; am § 6 ch 102 SLA 1980; am § 5 ch 143 SLA 1982)

Effect of amendments. — The 1980 amendment substituted "fourth" for "third" preceding "degree" in the introductory paragraph in subsection (a), and in subsection (b), and deleted "intentionally or" near the beginning of paragraph (1) in subsection (a).
The 1982 amendment, in subsection (a),

substituted "that person recklessly" for "he intentionally" in paragraph (3).

Legislative history reports. — For a report on Chapter 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supplement, No. 44, May 29, 1980, or 1980 House Journal Supplement, No. 79, May 28, 1980.

NOTES TO DECISIONS

Applied in Bidwell v. State, Ct. App. Op. No. 199 (File No. 6290), 656 P.2d 592 (1983); Jackson v. State, Ct. App. Op. No. 211 (File No. 6664), 657 P.2d 405 (1983).
Quoted in Maynard v. State, Ct. App. Op. No. 136 (File No. 5501), 652 P.2d 489 (1982).

Cited in Folger v. State, Ct. App. Op. No. 105 (File No. 5585), 648 P.2d 111 (1982); Kelly v. State, Ct. App. Op. No. 143 (File No. 6521), 652 P.2d 112 (1982); Moxie v. State, Ct. App. Op. No. 246 (File No. 7192), 662 P.2d 990 (1983).

Collateral references. — Standard for reckless conduct of minor motorist charged with gross negligence, recklessness, wilful

or wanton misconduct, or the like, under guest statute or similar common-law rule, 97 ALR2d 861.

Sec. 11.41.250. Reckless endangerment. (a) A person commits the crime of reckless endangerment if the person recklessly engages in conduct which creates a substantial risk of serious physical injury to another person.

(b) Reckless endangerment is a class A misdemeanor. (§ 3 ch 166 SLA 1978)

Article 3. Kidnapping and Custodial Interference.

Section
320 Kidnapping
320 Custodial interference in the first degree

Section
330. Custodial interference in the second degree
370. Definitions

FILED
Clerk of Court
June 12

BEST COPY AVAILABLE

prior felony drug convictions to become final so that defendant could cross-examine victim concerning the convictions for impeachment purposes. *People v. Gagnon*, 703 P.2d 661 (Colo. App. 1985).

Statute as basis for jurisdiction. *People v. Rice*, 37 Colo. App. 346, 551 P.2d 1081 (1976), rev'd on other grounds, 193 Colo. 270, 565 P.2d 940 (1977); *People v. Pacheco*, 191 Colo. 499, 553 P.2d 817 (1976); *People v. Arispe*, 191 Colo. 555, 555 P.2d 525 (1976); *People v. Wieckert*, 191 Colo. 511 554 P.2d 688 (1976), overruled on other grounds, *Villafraña v. People*, 194 Colo. 472, 573 P.2d 540 (1978); *People v. Pickett*, 194 Colo. 178, 571 P.2d 1078 (1977); *McDonald v. District Court*, 195 Colo. 59, 576 P.2d 169 (1978).

Applied in *Miller v. District Court*, 1931 Colo. 404, 566 P.2d 1063 (1977); *Jones v. Dis-*

trict Court, 196 Colo. 1, 584 P.2d 81 (1978); *People v. Chavez*, 629 P.2d 1040 (Colo. 1981); *People v. Lichtenstein*, 630 P.2d 70 (Colo. 1981); *People v. Francis*, 630 P.2d 82 (Colo. 1981); *People v. Trujillo*, 631 P.2d 146 (Colo. 1981); *People v. Jones*, 631 P.2d 1132 (Colo. 1981); *People v. Martinez*, 634 P.2d 26 (Colo. 1981); *People v. Stoppel*, 637 P.2d 384 (Colo. 1981); *People v. Mack*, 638 P.2d 257 (Colo. 1981); *People v. Sanchez*, 649 P.2d 1049 (Colo. 1982); *People v. Brassfield*, 652 P.2d 588 (Colo. 1982); *People v. Ferguson*, 653 P.2d 725 (Colo. 1982); *Watkins v. People*, 655 P.2d 834 (Colo. 1982); *People v. Dillon*, 655 P.2d 841 (Colo. 1982); *People v. Shearer*, 650 P.2d 1293 (Colo. App. 1982); *People v. Bridges*, 662 P.2d 161 (Colo. 1983).

18-3-207. Criminal extortion. (1) Whoever without legal authority threatens to confine, restrain, or cause economic or bodily injury to the threatened person or another or to damage the property, economic well-being, or reputation of the threatened person or another with intent thereby to induce the threatened person or another against his will to do an act or refrain from doing a lawful act commits criminal extortion which is a class 4 felony.

(2) Whoever without legal authority threatens by means of chemical or biological agents, weapons, or poison or by means of harmful radioactive agents to confine, restrain, or cause economic or bodily injury to the threatened person or to damage the property, economic well-being, or reputation of the threatened person or another with intent thereby to induce the threatened person or another against his will to do an act or refrain from doing a lawful act commits aggravated criminal extortion, which is a class 3 felony.

Source: R & RE, L. 71, p. 421, § 1; C.R.S. 1963, § 40-3-207; L. 75, p. 618, § 8; L. 81, pp. 974, 981, § § 8, 4; L. 82, p. 623, § 17.

Am. Jur.2d. See 6 Am. Jur.2d, Assault and Battery, § 28.

Law reviews. For article, "Criminal Law", which discusses a recent Tenth Circuit decision dealing with extortion, see 62 Den. U. L. Rev. 153 (1985).

This section is applicable to efforts to collect a legally enforceable debt. *People v. Rosenberg*, 194 Colo. 423, 572 P.2d 1211 (1978).

Applied in *People v. Hearty*, 644 P.2d 302 (Colo. 1982).

18-3-208. Reckless endangerment. A person who recklessly engages in conduct which creates a substantial risk of serious bodily injury to another person commits reckless endangerment, which is a class 3 misdemeanor.

Source: R & RE, L. 71, p. 421, § 1; C.R.S. 1963, § 40-3-208.

Am. Jur.2d. See 6 Am. Jur.2d, Assault and Battery, § 6.

Law reviews. For article, "Mens Rea and the Colorado Criminal Code", see 52 U. Colo. L. Rev. 167 (1981).

Offense not lesser included offense of third degree assault. The establishment of every element of third degree assault would not necessarily include proving conduct which creates a substantial risk of serious bodily injury, an ele-

ASSAULT

9A.36.060

found guilty of assault in third degree. *State v James* (1960) 56 Wn 2d 43, 351 P2d 125.

Where facts of case limit jury to possible findings of guilt of either first or second-degree assault or not guilty at all, instruction on third-degree assault is properly refused. *State v Stationak* (1968) 73 Wn 2d 647, 440 P2d 457.

A criminal assault being an offense against the peace and dignity of the state as well as an inva-

sion of the private rights of the person assaulted, it is not necessary to show apprehension by the victim in a prosecution for second-degree assault. *State v Frazier* (1972) 81 Wn 2d 628, 503 P2d 1073.

Whether third-degree assault, as defined in, is a lesser included offense of either first- or second-degree assault depends upon the facts of each case. *State v Lewis* (1976) 15 Wn App 172, 548 P2d 587.

9A.36.040 Simple assault. (1) Every person who shall commit an assault or an assault and battery not amounting to assault in either the first, second, or third degree shall be guilty of simple assault.

(2) Simple assault is a gross misdemeanor.

LEGISLATIVE HISTORY

Enacted Laws 1st Ex Sess 1975 ch 260 § 9A.36.040. Based on:

(a) Laws 1909 ch 249 §§ 155-157 p 934.

(b) Code 1881 § 103.

(c) Laws 1873 p 185 § 28, Laws 1869 p 202 § 26, Laws 1854 p 79 § 26.

See RRS §§ 2407, 2408, 2409 and former RCW 9.65.010, 9.65.020, 9.65.030.

9A.36.050 Reckless endangerment. (1) A person is guilty of reckless endangerment when he recklessly engages in conduct which creates a substantial risk of death or serious physical injury to another person.

(2) Reckless endangerment is a gross misdemeanor.

LEGISLATIVE HISTORY

Enacted Laws 1st Ex Sess 1975 ch 260 § 9A.36.050.

9A.36.060 Promoting a suicide attempt. (1) A person is guilty of promoting a suicide attempt when he knowingly causes or aids another person to attempt suicide.

(2) Promoting a suicide attempt is a class C felony.

LEGISLATIVE HISTORY

Enacted Laws 1st Ex Sess 1975 ch 260 § 9A.36.060. Based on:

(a) Laws 1909 ch 249 §§ 135-137, 149 pp 929, 932.

(b) Code 1881 §§ 794, 796.

(amended)

BEST COPY
AVAILABLE

OFFENSES AGAINST PERSONS

date of this Act [December 6, 1984], as well as the construction and application of any defense to a prosecution for such an offense.

(2) The provisions of this Act shall not apply to any offense committed before the effective date of this Act or to any defense to a prosecution for such an offense. Such an offense shall be construed and prosecuted according to the law existing at the time of the commission of the offense in the same manner as if this Act had not been enacted.

(3) When all or part of a criminal statute is amended or repealed by this Act, the criminal statute or part thereof so amended or repealed remains in force for the purpose of authorizing the accusation, prosecution and conviction of a person who violated the statute or part thereof before the effective date of this Act.

ASSAULT AND RELATED OFFENSES

163.160 Assault in the fourth degree.

(1) A person commits the crime of assault in the fourth degree if the person:

(a) Intentionally, knowingly or recklessly causes physical injury to another; or

(b) With criminal negligence causes physical injury to another by means of a deadly weapon.

(2) Assault in the fourth degree is a Class A misdemeanor. [1977 c.297 §5]

163.165 Assault in the third degree.

(1) A person commits the crime of assault in the third degree if the person:

(a) Recklessly causes serious physical injury to another by means of a deadly or dangerous weapon;

(b) Recklessly causes serious physical injury to another under circumstances manifesting extreme indifference to the value of human life; or

(c) Recklessly causes physical injury to another by means of a deadly or dangerous weapon under circumstances manifesting extreme indifference to the value of human life.

(2) Assault in the third degree is a Class C felony. [1971 c.743 §92; 1977 c.297 §3]

163.175 Assault in the second degree.

(1) A person commits the crime of assault in the second degree if the person:

(a) Intentionally or knowingly causes serious physical injury to another; or

(b) Intentionally or knowingly causes physical injury to another by means of a deadly or dangerous weapon; or

(c) Recklessly causes serious physical injury to another by means of a deadly or dangerous weapon under circumstances manifesting extreme indifference to the value of human life.

(2) Assault in the second degree is a Class B felony. [1971 c.743 §93; 1975 c.626 §1; 1977 c.297 §2]

163.185 Assault in the first degree. (1)

A person commits the crime of assault in the first degree if the person intentionally causes serious physical injury to another by means of a deadly or dangerous weapon.

(2) Assault in the first degree is a Class A felony. [1971 c.743 §94; 1975 c.626 §2; 1977 c.297 §1]

163.190 Menacing. (1)

A person commits the crime of menacing if by word or conduct the person intentionally attempts to place another person in fear of imminent serious physical injury.

(2) Menacing is a Class A misdemeanor. [1971 c.743 §95]

163.195 Recklessly endangering another person. (1)

A person commits the crime of recklessly endangering another person if the person recklessly engages in conduct which creates a substantial risk of serious physical injury to another person.

(2) Recklessly endangering another person is a Class A misdemeanor. [1971 c.743 §96]

163.197 Hazing. (1)

No fraternity, sorority or other student organization organized or operating on a college or university campus for purposes of participating in student activities of the college or university, nor any member of such an organization, shall intentionally haze any member, potential member or person pledged to be a member of the organization, as a condition or precondition of attaining membership in the organization or of attaining any office or status therein.

(2) As used in this section, "haze" means to subject a person to bodily danger or physical harm or a likelihood of bodily danger or physical harm, or to require, encourage, authorize or permit that the person be subjected to any of the following:

(a) Calisthenics;

(b) Total or substantial nudity on the part of the person;

(c) Compelled ingestion of any substance by the person;

(d) Wearing or carrying of any obscene or physically burdensome article by the person;

(e) Physical assaults upon or offensive physical contact with the person;

(f) Participation by the person in boxing matches or other physical contests;

BEST COPY AVAILABLE

29 Wash.App. 282
The STATE of Washington, Respondent,

v.

Dennis TURNER, Appellant.

No. 4071-II.

Court of Appeals of Washington,
Division 2.

April 20, 1981.

As Changed May 12, 1981.

Defendant was convicted before the Superior Court, Kitsap County, James D. Roper, J., of three counts of second-degree assault and one count of reckless endangerment, and he appealed. The Court of Appeals, Petrich, J., held that: (1) police officer had ample probable cause for the warrantless arrest of defendant; (2) defendant's warrantless at-home arrest was lawful and consequently his voluntary in-custody statements were properly entered at trial; (3) trial court did not abuse its discretion in admitting evidence of defendant's prior hypothetical question regarding the firing of warning shots in defense of his property, and a prior incident involving the individual subsequently shot at; and (4) defendant was not subjected to "multiple punishment" by application of both the firearm statute and deadly weapon statute, as the application of both statutes did not increase the maximum sentence for second degree assault.

Affirmed.

1. Arrest $\Leftarrow$ 63.4(2)

"Probable cause" that an offense has been committed exists where the facts and circumstances within arresting officer's knowledge, and of which he has reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in a belief that an offense has been committed.

2. Arrest $\Leftarrow$ 63.4(13)

Where police officer knew that defendant possessed a .22 caliber weapon, where from the proximity of the shell casings to the defendant's residence, diagrams of probable bullet trajectories, and other infor-

mation, the officer had reason to believe that the shots had been fired from nearby defendant's home, and where police officer also knew of defendant's past neighborhood quarrels, including the prior rifle-pointing incident involving the individual subsequently shot at, there was ample probable cause for the warrantless arrest of defendant on three counts of second-degree assault and one count of reckless endangerment, arising out of a series of Halloween shooting incidents.

3. Arrest $\Leftarrow$ 66

Where officers are lawfully in a private home pursuant to a search warrant, they may make a warrantless probable cause arrest even though there are not exigent circumstances.

4. Arrest $\Leftarrow$ 66

Criminal Law $\Leftarrow$ 412.1(3)

Where there was probable cause for arrest of defendant on three counts of second-degree assault and one count of reckless endangerment, where a warrant had already issued for the search of defendant's dwelling, and where defendant invited the police officers into his home, defendant's warrantless at-home arrest was lawful, and his voluntary in-custody statements were properly admitted at trial. West's RCWA 10.31.100.

5. Criminal Law $\Leftarrow$ 369.2(1)

Test of whether evidence of other crimes, wrongs, or acts is admissible is whether the evidence as to the other acts is relevant and necessary to prove an essential ingredient of the crime charged. ER 404(b).

6. Criminal Law $\Leftarrow$ 338(1)

Determination of whether testimony is relevant is within the discretion of the trial court, and each case depends on its own facts.

7. Criminal Law $\Leftarrow$ 371(1, 12)

In prosecution of defendant for three counts of second-degree assault and one count of reckless endangerment arising out of series of Halloween shooting incidents, evidence of defendant's previous hypotheti-

Additional pages of opinion
not copied.

BEST COPY
AVAILABLE

HB 301

115 301

STATE v. MORGAN
Cite as, Ariz.App., 625 P.2d 951

Ariz. 951

BEST COPY AVAILABLE

diligently inquired into whether reasonable grounds existed for an examination. His examination of the psychology intern and request for a full court clinic evaluation were part of his determination of reasonable grounds for examination, not competency itself. We see no error in vacating the rule 11 proceedings after Dr. Ginnetti's evaluation, which was much more complete and reliable than that of the intern, showed that there were no reasonable grounds for an examination. There is no substantial evidence in the record that appellant may have been mentally incompetent to stand trial. *But cf., Tillery v. Eyman*, 492 F.2d 1056 (9th Cir. 1974) (where extremely erratic and irrational behavior by defendant during trial was held to compel a competency hearing).

There is sufficient evidence to support the verdict and we find no fundamental error in the record.

peals, O'Connor, J., held that: (1) defendant was not entitled to instruction on "endangerment" or "threatening or intimidating" as lesser included offenses of aggravated assault with deadly weapon or dangerous instrument; (2) time sought by State for continuance was properly excluded and matter proceeded to trial within time limits required by rule governing speedy trial; (3) defendant failed to establish how she was prejudiced by failure of one victim to appear as witness in case or that trial court abused its discretion in granting State's motion for continuance; (4) prosecutor's comment in closing argument did not support unfavorable inference against defendant for her exercise of her constitutional privilege against self-incrimination; and (5) gun and bullets were properly admitted into evidence.

Affirmed.

1. Criminal Law ⇐795(1)

Criminal defendant is entitled to instructions on any lesser included offense of offense charged where evidence supports giving such instruction.

2. Criminal Law ⇐795(1)

If offense alleged to be lesser offense has element in addition to and separate from elements of offense which is asserted to be greater, it is not lesser included offense.

3. Assault and Battery ⇐48

One of required elements of "endangerment" is that victim must be placed in actual substantial risk of imminent death or physical injury, but there is no requirement that victim be aware of conduct of actor. A.R.S. § 13-1201.

See publication Words and Phrases for other judicial constructions and definitions.

4. Assault and Battery ⇐56

Elements of aggravated assault with deadly weapon or dangerous instrument are that actor intentionally placed another person in reasonable apprehension of imminent physical injury using deadly weapon or oth-

Affirmed.

HOWARD and BIRDSALL, JJ., concur.



128 Ariz. 362

STATE of Arizona, Appellee,

v.

Gail (Toby) MORGAN, Appellant.

No. 1 CA-CR 4474.

Court of Appeals of Arizona,
Division 1,
Department C.

Feb. 10, 1981.

Rehearing Denied March 19, 1981.

Defendant was convicted after jury trial in the Superior Court, Maricopa County, John H. Seidel, J., of one count of assault with deadly weapon or dangerous instrument and she appealed. The Court of Ap-

additional pages in opinion not copied

32

NAME: MARK J MURPHY

DATE: 3/6/87

ADDRESS: 3840 KIKI DR

PHONE: 444-3816

REPRESENTING WHOM? MCAA-

APPEARING ON WHICH PROPOSAL: 301 & 435

DO YOU: SUPPORT? X AMEND? X OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

HOUSE BILL NO. 301

INTRODUCED BY RAPP-SVRCEK, GOULD, PINESNEAULT,
HALLIGAN, HANNAH, VAN VALKENBURG, STIMATZ

A BILL FOR AN ACT ENTITLED: "AN ACT TO CHANGE THE
DEFINITION OF THE OFFENSE OF NEGLIGENT VEHICULAR ASSAULT AND
TO CREATE THE OFFENSES OF NEGLIGENT ENDANGERMENT AND
CRIMINAL ENDANGERMENT; AND AMENDING SECTION 45-5-205, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-5-205, MCA, is amended to read:

"45-5-205. Negligent vehicular assault -- penalty. (1)

If a person operates a motor vehicle in a negligent manner
and he is driving while under the influence of alcohol or
drugs, as provided for in 61-8-401(1), and his conduct is
the proximate cause of serious bodily injury to another, he
commits the offense of negligent vehicular assault.

(2) A person convicted of the offense of negligent
vehicular assault shall be fined an amount not to exceed
\$1,000 or imprisoned in the county jail for a term not to
exceed 1 year, or both."

NEW SECTION. Section 2. Criminal endangerment --
penalty. (1) A person who knowingly engages in conduct that
creates a substantial risk of death or serious bodily injury
to another commits the offense of criminal endangerment.

(2) A person convicted of the offense of criminal
endangerment shall be fined an amount not to exceed \$50,000
or imprisoned in the state prison for a term not to exceed
10 years, or both.

NEW SECTION. Section 3. Negligent endangerment --
penalty. (1) A person who negligently engages in conduct
that creates a substantial risk of death or serious bodily
injury to another commits the offense of negligent
endangerment.

(2) A person convicted of the offense of negligent
endangerment shall be fined an amount not to exceed \$1,000
or imprisoned in the county jail for a term not to exceed 1
year, or both.

NEW SECTION. Section 4. Codification instruction.
Sections 2 and 3 are intended to be codified as an integral
part of Title 45 and the provisions of Title 45 apply to
sections 2 and 3.

-End-